WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE JUSTICE MRS. R. BANUMATHI

H.C.P.NO.24 OF 2007

N. Kanchana
W/o.V. Natrajan .. Petitioner

Vs.

1. The State Rep. by
The Inspector of Police,
C-1 Flower Bazaar Police Station,
Chennai.

2. The Commissioner of Police,
Greater Chennai,
Emgore, Chennai 600 008.

3. The Secretary to Government,
Prohibition & Excise Department,
Secretariat, Chennai 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus directing the respondents to produce the petitioner's son Viji @ Vijayan S/o.V.Natrajan, aged about 26 years and now confined at Puzhal Central Porison before this Court and set him at liberty fortwith by setting aside the detention order Vide No.325/2006 dated 9.12.2006, on the file of the second respondent.

For Petitioner : Mr.K. Sukumaran

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

P.K. MISRA, J

The mother of the detenu has filed this Habeas Corpus Petition challenging the order of detention dated 9.12.2006 passed by the Commissioner of Police, Chennai City, under Section 3(1) read with 3(2) of the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act,1982 (Tamil Nadu Act 14 of 1982), hereinafter referred to as "the Act".

https://hcservices.ecourts.gov.in/hcservices/

2. The order of detention has been passed on the allegation that the detenu along with four others was involved in C-1 Flower Bazaar Police Station Cr.No.625 of 2006. The date of occurrence of the said case is 7.11.2006. It is alleged that offence under Sections 341, 302, 342, 353 and 506(2) IPC had been committed. In the grounds of detention, it is narrated that on the date of occurrence, while John Christopher and Surenderan, Head Constables, were on duty, it was found that one Dilli Babu was running from Central Jail towards E.V.R. Road and one Viji @ Vijayan, Ramu @ Raman Viji @ Vijayan @ Radio Viji @ Idly Viji, Nepoleon and Suresh, who were armed with patta knives, chased Dilli Babu, who crossed E.V.R. Road and ran towards police booth. Viji @ Vijayan, Ramu @ Raman, Viji @ Vijayan @ Radio Viji @ Idly Viji and Nepoleon surrounded and prevented Dilli Babu from escaping and Viji @ Vijayan @ Radio Viji @ Idly Viji instigated that the person should be killed as he had killed one Veera. Immediately, Viji @ Vijayan and Ramu @ Raman cut Dilli Babu with patta knives. Viji @ Vijayan @ Radio Viji @ Idly Viji cut Dilli Babu over his head, face, body and hand with the patta knife. Head Constable John Christopher raised shouts and ran towards the spot. Dilli Babu fell near the police booth. Suresh stood near and prevented Dilli Babu from escaping. Viji @ Vijayan @ Radio Viji @ Idly Viji and Nepoleon caught hold of the hands of the Head Constable John Christopher, who tried to push and apprehend all the persons. Further, Viji @ Vijayan @ Radio Viji @ Idly Viji asked his associate to cut Dilli Babu till he died. Later they left the Head Constable and ran away from the spot. The Head Constable chased them along with public, but the culprits threatened them at the point of knife. The culprits took advantage of the panic situation and escaped from the spot. John Christopher, Head Constable along with other Head Constable Surendran found the name of the injured is Dilli Babu and contacted C-1 Patrol vehicle and the injured Dilli Babu was taken to General hospital for treatment, but he was declared dead by the Duty Doctor as "brought dead". John Christopher, Head Constable, lodged complaint at C-1 Flower Bazaar Police Station on the basis of which Cr.No.625 of 2006 was registered.

3. In the grounds of detention, it was indicated:

> "... The offences under section 341, 342, 353, 302 and 506 (2) IPC relates to wrongful restraint, wrongfully confining, use of criminal force to deter public servant from discharging his duty, murder and criminal intimidation as such punishable under chapters 16 and 17 of the said code. Hence, I am satisfied that Thiru Viji @ Vijayan is habitually committing crime and also acted in a manner prejudicial to the maintenance of public order as such he is a Goonda as contemplated u/s 2(f) of the Tamil Nadu Act 14 of 1982. By committing the above described grave crime in the public, in front of the busy Railway Station where huge number of public gathered, in the busy day time has created alarm and a feeling of insecurity in the minds of the people of the area and thereby acted in a manner prejudicial to the maintenance of public order.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

4. I am also aware that Thiru Viji @ Vijayan is in remand in C.1 Flower Bazaar Police Station Crime No.625/2006 and he has not moved any bail application so far. I am also aware that there is real possibility of his coming out on bail by filing bail application before Sessions Court or High Court since in similar cases bails are granted by the Sessions Court or High Courts. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, which are prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that the said Thiru Viji @ Vijayan is a Goonda and that there is a compelling necessity to detain him in order to prevent him from indulging in such further activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982."

4. Learned counsel appearing for the petitioner, while assailing such order of preventive detention, has raised the following contentions: -

(1) The incident relied upon by the detaining authority can be said to be relatable to a law and order problem rather than affecting the public order and, therefore, no order of detention could have been passed under Section 3(1) read with 3(2) of the Act.

(2) In the FIR lodged by John Christoper, it has been stated that as if the offence has been committed by four persons, i.e., Viji, Ramu and two unknown persons, whereas the detaining authority in the grounds of detention has relied upon alleged involvement of five persons and in the absence of any explanation it should be taken that the order of preventive detention is based on non-application of mind.

(3) The F.I.R. was lodged at 3.30 P.M. on 7.11.2006. The informant knew about the identity of the deceased, but in the Accident Register in respect of the injured person, who was brought to the hospital at 2.20 P.M. it is indicated that an unknown dead person had been brought. It is contended that by not noticing the above contradiction, it can be said that there is non-application of mind on the part of the detaining authority.

(4) The detaining authority has come to the conclusion that the detenu is likely to be released on bail without any cogent material and on the basis of mere ipse dixit of the detaining authority.

(5) The conclusion of the detaining authority that the detenu is a"Goonda" is not based on any material and there is clear non-application of mind to the provisions contained in the Act.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

5. So far as the first contention is concerned, such contention is to be merely stated to be rejected. The occurrence took place in broad daylight in a busy area. The setting and the surrounding in which occurrence took place clearly indicate that the detenu and others had acted in a manner prejudicial to the maintenance of public order.

6. The second and third contentions are taken up together being somewhat related. It is no doubt true that the FIR prima facie indicates involvement of two known persons and two unknown persons. However, in the booklet furnished, statements of eyewitnesses are available to indicate involvement of five persons. The order of detention is based on subjective satisfaction of the detaining authority. The grounds of detention do not specifically indicate that the detaining authority based the order of detention only on the FIR. What would be the effect of the alleged omission in the FIR is a matter to be considered during the trial and at this stage it cannot be stated that there was no material before the detaining authority to come to the conclusion regarding the alleged involvement of five persons, all of who have been detained. While dealing with Habeas Corpus Petition, the High Court is not expected to sit as an appellate authority nor it is expected to substitute the conclusion based on the subjective satisfaction of the detaining authority. Therefore, such contentions are not acceptable.

7. Fourth contention of the petitioner is to the effect that the detenu was admittedly in custody and there was no real possibility of his coming out on bail at that stage and therefore there was no necessity or justification for passing an order of preventive detention. It has been further submitted that the conclusion of the detaining authority that "I am also aware that there is real possibility of his coming out on bail by filing bail application before Sessions Court or High Court since in similar cases bails are granted by the Sessions Courts or High Court." is mere ipse dixit of the detaining authority without any material on record and more particularly keeping in view the nature of allegations and the fact that investigation was still in progress and even there was no reasonable possibility of obtaining statutory bail contemplated under Section 167(2) proviso of Cr.P.C. as the period stipulated for completion of the investigation was far remote. In this connection, learned counsel appearing for the petitioner has invited our attention to several decisions of the Supreme Court as well as the Full Bench and other Division Bench decisions of this Court.

8. Learned counsel appearing for the State has submitted on the other hand that even where a person is in custody, a detention order can be passed, if the detaining authority in its subjective satisfaction comes to the conclusion that there is imminent or real possibility of the person being released on bail, and in the present case since such a conclusion has been arrived at by the detaining authority, there is no scope for interference in such matters. He has placed reliance upon the decisions of the Supreme Court reported in 1991 SCC (Cri) 88 (KAMARUNNISSA v. UNION OF INDIA AND OTHERS) and (2006) 3 SCC (Cri) 50 (SENTHAMILSELVI v. STATE OF TAMIL NADU AND ANOTHER).

https://hcservices.ecourts.gov.in/hcservices/

9. We have bestowed our anxious consideration to the aforesaid aspect. In the present case, the occurrence had taken place on 7.11.2006 and the order of detention was passed on 9.12.2006, hardly 32 days after the occurrence. The detenu Viji @ Vijayan surrendered before the Magistrate on 8.11.2006. Since the alleged offence is under Section 302 IPC and punishable with death or life imprisonment, benefit of statutory bail as contemplated under Section 167(2) proviso of the Code of Criminal Procedure would be been available only after expiry of 90 days from the date of arrest and, therefore, there was no immediate possibility of availing such benefit as a further period of about two months was still available for the purpose of completion of investigation and filing of chargeshet.

10. It is well known that while considering the question of grant of bail, the Court of law is required to consider the seriousness of the allegation, materials on record regarding existence of prima facie case, impact of release on bail on the society and various other factors such as pendency of investigation, etc. The investigation was still in progress and the alleged offence obviously was not of a routine nature where one could reasonably assume that bail would be granted as a matter of course. It is indeed an insult to the judicial intelligence to imply that even in a serious case alleging commission of offence of murder in a broad daylight, bail would be granted in a routine manner even before completion of investigation. On top of these, the fact remains that the detenu was yet to file a bail application.

11. In the above background, the conclusion of the detaining authority to the effect "I am also aware that there is real possibility of his coming out on bail by filing bail application before Sessions Court or High Court since in similar cases bails are granted by the Sessions Courts or High Court." can only be characterized as mere ipse dixit of the detaining authority and it cannot be said that there was any material, far less any cogent material to sustain even remotely the conclusion of the detaining authority regarding the real possibility of the detenu being released on bail. It may be that if the statutory period contemplated under Section 167(2) proviso was about to end and investigation was still in progress, one could infer that there was real possibility of the accused being released on bail even in a very heinous crime because of the statutory provision. Similarly, where the alleged offences appear to be very common place and punishment is less severe, any one can reasonably conclude that there is possibility of grant of bail after lapse of sometime. Likewise, if the investigation in a matter is complete and chargesheet has been filed, possibility of being released on bail looms large even in cases where the allegations appear to be serious. Similarly, keeping in view the tender age or sex or old age and health condition of the accused, one can reasonably conclude that bail may be granted even at a very nascent stage of investigation keeping in view the provisions contained in Section 437(2) proviso of the Code of Criminal Procedure. But where such special features are not applicable, it is difficult to sustain the mere ipse dixit of the detaining authority that there is a real possibility of being released on bail.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

12. It is of course as has been observed by the Full Bench in 2005-2-L.W.(Crl.)946 (K.THIRUPATHI v. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, TIRUCHIRAPALLI DISTRICT AND ANOTHER), it is neither possible nor advisable to indicate the circumstances under which the detaining authority may come to a particular conclusion and therefore the instances indicated by us need not be considered as exhaustive principles, but mere illustrations.

13. Applying the test of various decisions which are now well recognized, we have no hesitation to observe that the conclusion of the detaining authority regarding possibility of the detenu being released on bail was not based on any material whatsoever, far less any cogent material and was the mere ipse dixit of the detaining authority and, therefore, the order of detention based on such vulnerable conclusion is bound to be quashed notwithstanding the seriousness of the allegations.

14. As already indicated the learned counsel for the State has placed reliance upon the decisions of the Supreme Court in 1991 SCC (Cri) 88 and (2006) 3 SCC (Cri) 50 (cited supra). In Kamarunnissa's case, the Supreme Court had observed that where the person is in custody, if the detaining authority on the basis of reliable material comes to a conclusion regarding imminent possibility of the detenu being released on bail, such preventive detention order could be passed.

15. Learned counsel for the respondents has also placed strong reliance upon the decisions of the Supreme Court reported in (2006) 3 SCC (Cri) 17 (IBRAHIM NAZEER v. STATE OF TAMIL NADU AND ANOTHER), (2006) 3 SCC (Cri) 50 (SENTHAMIL SELVI v. STATE OF TAMIL NADU AND ANOTHER) and (2006) 3 SCC (Cri) 324 (A. GEETHA v. STATE OF TAMIL NADU AND ANOTHER).

16. In (2006) 3 SCC (Cri) 17 (IBRAHIM NAZEER v. STATE OF TAMIL NADU AND ANOTHER), the detention was under COFEPOSA Act. The only contention was to the effect that the High Court was not justified in upholding the conclusion of the detaining authority regarding imminent possibility of the detenu coming out on bail, more particularly when the detenu had not filed any bail application after withdrawal of the first bail application. The Supreme Court observed:-

> "7. It has to be noted that whether prayer for bail would be accepted depends on the circumstances of each case and no hard-and-fast rule can be applied. The only requirement is that the detaining authority should be aware that the detenu is already in custody and is likely to be released on bail. The conclusion that the detenu may be released on bail cannot be an ipse dixit of the detaining authority. On the basis of materials before it, the detaining authority came to the conclusion that there is likelihood of the detenu being released on bail. That is his subjective satisfaction based on materials. Normally, such satisfaction is not to be interfered with. On the facts of the case, the detaining authority has indicated as to why he was of the opinion that there is likelihood of the detenu being released on bail. It has been clearly stated that in similar cases, orders granting bail are

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

passed by various courts. The appellant has not disputed the correctness of this statement. Strong reliance was placed by learned counsel for the appellant on Rajesh Gulati v. Govt. of NCT of Delhi. The factual scenario in that case was entirely different. In fact, five bail applications filed had been already rejected. In that background this Court observed that it was not a "normal" case. The High Court was justified in rejecting the stand of the appellant." (Emphasis added)

17. In (2006) 3 SCC (Cri) 324 (A. GEETHA v. STATE OF TAMIL NADU AND ANOTHER), the detenu was detained under Section 3(2) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982, on the allegation that detenu was indulging in immoral trafficking. In the appeal, conclusion about the imminent possibility of being released on bail was under challenge. The Supreme Court made similar observations.

18. Similar observations were also made in (2006) 3 SCC (Cri)50 (SENTHAMILSELVI v. STATE OF TAMIL NADU AND ANOTHER).

19. A careful reading of these decisions indicates that conclusion of the detaining authority regarding imminent possibility of being released on bail was based on materials and as such was not liable to be interfered with as conclusion of the detaining authority on the basis of materials on record regarding imminent possibility of coming out on bail should not be interfered with. At the same time, the Supreme Court emphasised that such conclusion should not be based on the mere ipse dixit of the detaining authority, but on the other hand should be based on materials on record. As a matter of fact, in all these three cases, the detaining authority had come to the conclusion that in similar cases orders granting bail are passed by various courts and the Supreme Court observed that the appellant "had not disputed" the correctness of such statement. In other words, it is very much clear that the appellants in those cases had not disputed the correctness of the statement that in similar cases bail orders are granted. As a matter of fact, keeping in view the nature of offence in the cases noticed by us, one under the Customs Act and the other under Prevention of Immoral Traffic Act, it can be readily concluded that grant of bail was the rule rather than the exception and obviously that was the reason why the appellants had not disputed the correctness of the statement that in similar cases bail orders are granted by the courts.

20. We are unable to persuade ourselves to come to the conclusion that the Supreme Court in the above three decisions intended to depart from the well settled principle of law recognized by series of decisions, which have already been noticed and analyzed in the Full Bench decision reported in 2005-2-L.W.(Crl.)946 (cited supra) . However, on the peculiar facts situation, the Supreme Court had concluded that conclusion of the detaining authority regarding possibility of being released on bail was based on materials on record and, therefore, not to be interfered with.

https://hcservices.ecourts.gov.in/hcservices/

21. The last contention of the petitioner is to the effect that there is no application of mind on the part of the detaining authority regarding applicability of provisions of Section 3 to the present case.

22. As per Section 2(1)(a)(iii) "acting in any manner prejudicial to the maintenance of public order" means – in the case of a goonda, when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order.

As per Section 2(1)(f) "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually, commits, or attempts to commit or abets the commission of offences, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code, 1860 (Central Act XIV of 1860).

The governing expression in such definition clause is the word "habitually".

23. While considering the expression "habitually" the Supreme Court in (2006) 3 SCC (Cri) 11 (R. KALAVATHI v. STATE OF TAMIL NADU AND OTHERS) observed as follows: -

> "13. The expression "habitually" is very significant. A person is said to be habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. (See Ayub v. S.N. Sinha : (1990) 4 SCC 552).
>
> 14. From one single transaction though consisting of several acts, a habit cannot be attributed to a person."

24. From the aforesaid decision, it is apparent that the detaining authority is first required to come to a conclusion that the person is Goonda in the sense defined in the Act and only after coming to such a conclusion the detaining authority can pass an order of detention to prevent such a person acting in any manner prejudicial to the maintenance of public order. The expression "acting in any manner prejudicial to the maintenance of public order" is to be construed in the light of Section 2(a)(iii) read with Section 2(1)(f) of the Act.

25. In the present case, the detaining authority has neither relied upon nor even referred to the past activities of the detenu. The detaining authority has merely referred to the "ground incident" dated 7.11.2006 and thereafter jumped to the conclusion that the detenu is a Goonda. Keeping in view the ratio of the aforesaid decision of the Supreme Court in Kalavathi's case, such conclusion of the detaining authority cannot at all be upheld. On this ground also, the detention order of the detenu Viji @ Vijayan is liable to be quashed.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

26. For the aforesaid reasons, the detention order dated 9.12.2006 detaining Viji @ Vijayan as a Goonda is quashed and he is set at liberty forthwith unless his presence is required in connection with any other case.

dpk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The State Rep. by
   The Inspector of Police,
   C-1 Flower Bazaar Police Station,
   Chennai.

2. The Commissioner of Police,
   Greater Chennai,
   Emgore, Chennai 600 008.

3. The Secretary to Government,
   Prohibition & Excise Department,
   Secretariat, Chennai 600 009.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law & Order)
   Fort Saint George, Chennai-9.

+ 1 cc to Mr.K.Sukumaran, Advocate Sr.No.57940.

NSM(CO)
dcp/22.8

HCP.NO.24/2007

https://hcservices.ecourts.gov.in/hcservices/